

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
ATHENA ART FINANCE CORP., : Docket #20cv4669
Plaintiff, :
- against - :
THAT CERTAIN ARTWORK BY :
JEAN-MICHEL BASQUIAT ENTITLED :
HUMIDITY, 1982, IN REM, :
Defendant. : New York, New York
: June 16, 2022
----- : TELEPHONE CONFERENCE

PROCEEDINGS BEFORE
THE HONORABLE VALERIE FIGUERO, D
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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INDEXE X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>	<u>Court</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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THE CLERK: This is the matter of Athena Art Finance Corp. v. That Certain Artwork by Jean-Michel Basquiat Entitled Humidity, 1982, In Rem, docket number 22cv4669. The Honorable Valerie Figueredo presiding. Counsel, please note your appearance for the record, stating with plaintiff's counsel.

MS. CHRISTINE SAMA: Good afternoon, Your Honor, Christine Sama, Jonathan Shapiro, and Jim Gatta are on the line from Goodwin Procter for Athena.

MR. JUDD GROSSMAN: Good afternoon, Your Honor, Judd Grossman from Grossman LLP on behalf of intervenor-plaintiff Satfinance Investment Limited.

MR. GREGORY CLARICK: Good afternoon, Your Honor, this is Gregory Clarick from Clarick Gueron Reisbaum on behalf of intervenor-plaintiff Delahunty Limited.

THE COURT: Good afternoon, everyone, this is Judge Figueredo. So I have your letters beginning with the May 25 letter, the June 13 letter, and then various June 14 letters. I guess I'd like to get started if Satfinance wants to give me an overview of where you currently stand on the discovery issue that you had raised in the May 25 letter. I know there was some dispute about whether some of those issues had already been resolved.

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2 So I'd just like to get a sense of what your position is
3 in terms of the outstanding discovery disputes.

4 MR. GROSSMAN: Thank you, Your Honor, this is
5 Judd Grossman on behalf of Satfinance. I'll start by
6 saying obviously discovery in the case is scheduled to
7 have closed several weeks ago. Our friends at Goodwin
8 have now entered an appearance and are by all accounts
9 making good faith efforts to get up to speed, including
10 collecting according to their estimates nearly 300,000
11 documents that hadn't previously been collected.

12 So I'm in kind of a difficult position to say
13 where things are because other than knowing things weren't
14 done that shouldn't have been done, I don't know what's
15 missing, I don't know why it's missing, I don't know
16 whether there was an appropriate search preservation
17 protocol in place. I'm not sure why certain custodians,
18 some of whom are no longer with the company, didn't have
19 their records pulled. So I'm in that difficult position
20 of not knowing an answer to your question which makes it
21 difficult to, in turn, identify exactly what remedies
22 we're entitled to.

23 I'll point out, this isn't the first time,
24 notwithstanding the opposition's letter, that we raised
25 the issues with the Court, and this is starting at docket

number 77 where over one year ago we wrote to the Court identifying Athena's, quote, "continuing discovery default and seeking an order compelling Athena's immediate compliance with our document requests." Several days later, and this is at docket number 78, Athens's then counsel who recently withdrew wrote, "As of this morning," and this was May 4, 2021, "we completed our document production. Accordingly, counsel's request for a conference is, we submit, moot."

Well, here we are a year later and Athena's new counsel is making that very same argument that our request is moot, and if we look at footnote 1 of their letter, they now represent that, after having collected 275,000 documents and just starting their review, that somehow they can say that they already produced the bulk of their documents nearly a year ago.

So we're really in the dark here, and other than that the baseline remedy that we've outlined in our most recent letter, it's difficult to say at this point what additional remedies are appropriate. There are a host that could be appropriate, but I don't want to get ahead of ourselves until we understand why things weren't collected, produced, reviewed, and why Athena was representing to the Court a year ago that its production

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had been complete.

THE COURT: Well, before anyone else interjects, I'm just kind of, I'm a bit confused as to why you're telling me discovery was supposed to close a few weeks ago, that we're still at this point where stuff hadn't been collected and searched for. So if someone from Athena's counsel can speak to that.

MS. SAMA: Yes, Your Honor, this is Christine Sama. You know, Your Honor, we can't speak to all of the details of what happened before we got involved in the case, you know, it's been a week since we've been retained, and in that time we've done a lot of work. You know, Mr. Grossman just referred to almost 300,000 documents have been collected. That's obviously a very broad swatch of documents. We're being very inclusive in terms of all the documents that we're reviewing. And we do feel confident that that set of documents is, you know, the full set of documents that we're looking at.

And I think what's important to realize is that we're looking at this, but there are dropped balls on both sides here. And I know in our June 13 letter we refer to the documents that, you know, Athena is looking for as well. This isn't sort of a one-way street. It seems that there's been, for whatever reason, this lag here where

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2 there are all sorts of open discovery issues that haven't
3 been pursued until very recently.

4 So we're doing our very best, Your Honor, in the
5 last week to resolve all those issues on Athena's end as
6 quickly as possible. We think we've made very good
7 progress toward that end, and we've collected documents of
8 five custodians, and we've already started our review.
9 We're expecting to start producing documents next week.
10 So the question in our mind is when we're going to see the
11 same effort put forth by the other parties.

12 MR. GROSSMAN: Your Honor --

13 (interposing)

14 THE COURT: Sorry, just to be clear on what
15 Athena thinks is missing from the other sides' document
16 productions that would be.

17 MS. SAMA: Your Honor, that would be the
18 categories of documents that are outlined in our June 13
19 letter. So that would be the full set of text messages
20 and (indiscernible) messages. And also there's various
21 substantive categories of documents. I can just pull it
22 up.

23 THE COURT: Documents concerning the U.K.
24 proceeding, communications with insurers, account ledgers,
25 okay.

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2 MS. SAMA: That's correct, Your Honor.

3 MR. GROSSMAN: And this is Judd Grossman, Your
4 Honor. To be very clear, this very much is a one-way
5 street. It's a one-way street because all these
6 categories of documents that Athena's new counsel is
7 identifying were the subject of very detailed objections
8 and responses that we served on August 30, 2021, all of
9 these exact requests. Numbers 12, numbers 19, number 32.
10 We either objected to producing certain categories
11 outright, for example, documents concerning the U.K.
12 proceeding, or we identified objections and with
13 specificity, as the Court's local rules required,
14 identified the categories of documents that we would
15 produce. And all of those documents have been produced
16 with the exception of a handful of documents, not
17 categories of documents, but documents that were
18 identified at our client's deposition which is largely
19 complete which needed to be adjourned for scheduling
20 purposes and no other reason. So we're literally talking,
21 I don't know, something like five to ten pages that are I
22 think ready to go out now.

23 But this is a classic case of misdirection
24 pointing the finger at us when we've complied with every
25 single discovery obligation and subject to those very

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2 detailed objections and responses produced all the
3 documents in our possession.

4 As we pointed out in our letter, it shouldn't be
5 surprising that in an art transaction like this, our
6 client, just like Delahunty's client, claims to have
7 purchased the painting, there aren't going to be that many
8 documents. Notwithstanding, Athena served dozens and
9 dozens of requests which results in the hundreds or I
10 guess more than thousands of pages that we already have
11 produced. But there isn't anything outstanding from our
12 end holding up discovery.

13 This is an effort by Athena to say, look, let's
14 all wipe our hands clean with this and let's start over.
15 Well, we're two years into the case. Once we are finished
16 the depositions that had been slated for weeks ago but
17 then needed to be adjourned, some as a result of this
18 discovery dispute, others by the way without explanation.
19 So, for example, we raise this in our letter, we had
20 served a subpoena on Michael Weisz, the head of the parent
21 company Yieldstreet, Athena's counsel accepted service for
22 that subpoena, never served an objection, never served a
23 response, but never produced the witness.

24 And so this isn't a matter of discovery being
25 held up by anything on our end. It's pretty egregious

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2 failures, quite frankly, the most egregious I've seen
3 absent intentional spoliation, and that's what needs to be
4 addressed here, Your Honor.

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THE COURT: Can I just ask a follow-up
6 question, Mr. Grossman? You had indicated that the
7 document requests that they indicated in their letter,
8 those repeatedly made and your side responded and objected
9 to them in August 30 of 2021. And I'm assuming from prior
10 counsel for Athena there had been no follow-up or any type
11 of claim of deficiency at that point.

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MR. GROSSMAN: That's absolutely correct.

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MS. SAMA: That's not correct, Your Honor. Our
14 understanding is that those objections were challenged
15 previously last year, and that that's one of the open
16 issues that we've been trying to resolve in addition to
17 these open issue that Athena's been working towards
18 resolving. And obviously we take a different view. We
19 don't think that the other party should be able to
20 withhold documents on the basis of these objections that
21 we've challenged. We want to work with them on that.
22 They have, it seems, been unwilling to work with us on it
23 until this point, and, you know, then we're going to have
24 a motion on that if they're not going to work with us to
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THE COURT: Let me just ask you, you say you challenged them, but when were they challenged?

MS. SAMA: It was a letter, I believe it was in June. It was a letter in June of last year, Your Honor.

MR. GROSSMAN: Our responses were served in August, Your Honor, August 30. So whatever letter in June the parties worked through those issues. As I say, our client's deposition went forward. It didn't go forward under a reservation of rights because of documents outstanding. At that deposition a handful of pages were identified that hadn't been produced, one of which, for example, by the way, we had previously said in our objections and responses we wouldn't produce, but we agreed to reconsider that, and we're not producing that document. But this was never an issue that came to a head, until now, until we're trying to point the finger the other way.

MR. CLARICK: Your Honor, I don't mean to interrupt, but this is Gregory Clarick for Delahunty, and I just want to make clear that Delahunty is in exactly the same position as Satfinance insofar as having responded to the document requests in May and in August I believe of 2021 with detailed responses and objections, making clear what we would produce and what we were objecting to

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2 produce. And then we, in fact, did our document review
3 based on those objections, having not, you know, having no
4 open ongoing dispute with Athena with its prior counsel.
5 And we spent a lot of money pulling documents and
6 reviewing documents and make that production, and our
7 client was deposed a month ago, you know, seven, eight
8 months later. And we never heard, you know, again, about
9 any problem with our responses and objections.

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And we submit, just like (indiscernible)
11 submitting certainly, that it's far, far too late for
12 Athena to come back in with new counsel and try to reopen
13 discovery that's already occurred, including to reopen and
14 address objections that apparently new counsel has
15 concerns about that should've happened a year ago before
16 we did our production, before we did our document review
17 and production, and during the time when discovery,
18 document discovery was ongoing.

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MS. SAMA: Your Honor, if I may, there was a
20 letter in 2021 and also a letter last month that addressed
21 these issues. We're looking at the same timetable as the
22 other parties in terms of the timeline and following up on
23 discovery issues. We also sent a letter on these issues
24 last Friday. We've never received a response. We asked
25 for a response. We still haven't received a response.

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2 And we tried to discuss some of these issues as recently
3 as yesterday, and the call was cancelled. So we're
4 looking at the same timetable, and these are certainly
5 issues that have been on the table. They're not new
6 issues that are being manufactured now.

7 THE COURT: Well, let me just ask you, if
8 they're not new issues, then presumably you'd have letters
9 dated after August 30, 2021 and something far less recent
10 than last week where you would've raised objections to
11 their objection.

12 MS. SAMA: We do, Your Honor.

13 THE COURT: Okay, I mean I think, I understand
14 their argument that these were objections made almost a
15 year ago at this point. So I do tend to agree that if the
16 first time you're raising these objections is in May of
17 2022, that that would be problematic.

18 MS. SAMA: Yeah, that's not the case, Your
19 Honor. There was a letter last year, and we can get you
20 the exact date, but the first time these issues were
21 raised was not in May of 2022.

22 MR. GROSSMAN: Your Honor, this is Judd
23 Grossman. The issues were addressed, and that's why
24 Athena proceeded with every single deposition, three
25 depositions of my client, one I believe of Delahunty with

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2 two more scheduled. The May 24 letter that was just sent
3 that's being referenced was following our client's
4 deposition. It's what I referenced before which said,
5 hey, can you please reconsider producing certain documents
6 that you previously objected to and didn't produce. And
7 as I said, in one of those cases we are willing to
8 reconsider it. But this was all not in response to our
9 August 31, 2021 objection; these were issues that came up
10 at the deposition which they proceeded with with no
11 objection.

12 MS. SAMA: Your Honor, this is absolutely
13 incorrect. There have been open issues on both sides
14 going back a year, longer than a year, close to 18 months
15 ago. There's been no waiver. That's just not correct.

16 THE COURT: Well, I guess I - on that plane, I
17 would just hope to see these letters where these issues
18 were raised in a more timely fashion. So I'm happy to put
19 this aside until those letters, until you find the letters
20 and we can discuss that separately.

21 I guess we still have though outstanding the
22 issues raised in the May 25 letter with regard to the
23 document collection. And so I mean I - I understand that
24 you guys were just recently retained and are new counsel,
25 and I understand you're making an effort to collect and

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2 search for the documents. How much time do you need to
3 get the collection completed and the documents produced?

4 MS. SAMA: Well, we're expecting to produce our
5 first documents next week, Your Honor, and we just started
6 producing the documents. So we're going to need a little
7 bit of time to see how long it's going to take to get
8 through the entire set. Obviously, it's a large set. We
9 don't expect to produce 300,000 documents, but it's only
10 been a few days, so we're trying to sort that out.

11 MR. GROSSMAN: Your Honor, this is Judd
12 Grossman on behalf of SIL. In our May 25 letter, again,
13 we asked for several remedies, and, again, in our most
14 recent letter, which was June 14, based on our discussions
15 with new counsel, additional remedies that we believe at
16 this point we're entitled to, for example, that plaintiff
17 at its own expense de-dupe its next productions. We heard
18 from them the other day that they're going through these
19 hundreds of thousands of documents and they'll produce
20 everything that's responsive whether or not they've
21 already produced it. Well, that's a burden and a cost
22 that should not be shifted to us in any case but
23 especially where discovery has closed.

24 Again, we are not faulting new counsel at all.
25 I appreciate all of their effort. But their client has a

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2 very experienced in-house lawyer, a litigator with ten
3 years plus of experience, big firm law experience, and art
4 law, and we learned recently that she was (indiscernible)
5 or spearheaded the collection and production process. If
6 we are going to be intelligently addressing their
7 responses and also revisiting any other issues, it's only
8 appropriate that we learn exactly what happens, what
9 didn't happen, and why. And so to the extent there'll be
10 supplemental letters to the Court outlining what this is
11 being made on this next go-around, we respectfully submit
12 that it's essential that Athena provide that information
13 as well.

14 THE COURT: So I take your point. I'm inclined
15 to set, as you requested, a date certain for the
16 plaintiffs to finally complete their production. I'm
17 still kind of - I'm somewhat surprised that it's gone this
18 far and the production is this far behind. I understand
19 that they have new counsel, and, again, I'm not faulting
20 count at all, but I think it would be fair to get an
21 explanation from inhouse counsel for Athena for why these
22 documents weren't collected earlier.

23 MS. SAMA: I'm surprised as well, Your Honor.
24 But we're very surprised that on both sides it had been a
25 year, year and a half, and there are all of these issues,

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discovery issues that hadn't been resolved and that were open and outstanding.

THE COURT: Well, on both sides' question, I'm still, you know, I'd like to just see the letters where these issues were raised in the fall of 2021.

MS. SAMA: No problem, Your Honor.

THE COURT: So on a discovery schedule, do the sides have some suggestion as to what dates they think would be fair?

MS. SAMA: We would ask for one month, Your Honor.

MR. GROSSMAN: This is Judd Grossman. No objection to the amount of time. I understand it's a lot of work to be done. Of course, so without waiving any of our objections and rights which we've already outlined.

THE COURT: Okay, and then the request is also to set the party deposition deadline two weeks after plaintiffs' production deadline?

MR. GROSSMAN: Well, Your Honor, this is Judd Grossman. It really depends on the volume of the production. If we're going to be getting tens of thousands of new documents that should've been produced, I submit that two weeks may not be enough for party depositions. We have other depositions, as I mentioned,

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that were scheduled but cancelled by Athena without explanation, those we would like to see be scheduled immediately, and that includes the deposition of Michael Weisz.

MS. SAMA: Your Honor, we disagree with the characterization of the deposition scheduling, but we're happy to meet and confer to the extent that Mr. Grossman doesn't know when he (indiscernible) the depositions now and we can sort that out.

THE COURT: Well, why don't we go ahead and set like a final date by which - so it sound to me like the parties think that one additional month is all that's needed to review the documents and produce them, and then I'd like to just set an outside date for the completion of all depositions.

MS. SAMA: Well, Your Honor, just to be clear though, one month was the amount of time that we would be able to fulfill the review that we're doing, but we don't know how long it would take Mr. Grossman and his clients to fulfill their outstanding obligation.

MR. GROSSMAN: Yeah, that's more than enough time because, in all fairness and with all due respect, a handful of pages can be given to by next week.

MS. SAMA: We don't believe though that it's a

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2 handful of pages. We understand that that's, you know,
3 your position, Mr. Grossman and what you think is
4 outstanding, but we think it's a lot more than that. So
5 we want to make sure that we have adequate time for that.
6 And now so we want to meet and confer on this.

7 THE COURT: So how about we do this, I am - I'm
8 inclined to say that you should take, you know, take an
9 extra month, take two months to finish the outstanding
10 discovery issues, and when I say outstanding discovery
11 issues, I do think that unless there's some letters from
12 the fall of '21 raising these objections on those
13 documents, you know, the objections raised in May of 2022
14 would be untimely.

15 MS. SAMA: We understand, Your Honor. We'll
16 provide the letters.

17 THE COURT: Okay, so I can set a two-month
18 deadline for the conclusion of all document discovery, and
19 then, again, I'd just like to give you a deadline by which
20 all depositions are to be finished so we can get this case
21 moving. So if you should tell me how much time you think
22 you need, if you'd like to meet and confer and come back
23 with a proposal, that's fine too.

24 MR. GROSSMAN: Thank you, and I that perhaps
25 makes sense once Athena lets us know what the total volume

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2 of new documents will be. I just for clarity's sake, with
3 these supplemental submissions and whatever letters
4 Athena's going to bring to the Court's attention that they
5 claim opens up new issues, we still would like, and if
6 necessary the opportunity to brief it, an order that as
7 far as de-duping goes that that is their obligation, it's
8 their burden, and it's their expense.

9 MS. SAMA: Your Honor, we are happy to do de-
10 duplicate or not to duplicate in any different way. I
11 just, I have to say that the first we're hearing about
12 this issue or objection about de-duplicating was in the
13 letter that we received on June 14. We're happy to
14 discuss that with you, and it's not a problem. We view
15 that as more of a technical issue.

16 MR. GROSSMAN: Okay, well, just to be clear,
17 because I know it's not a problem to discuss, but if it's
18 an agreement that it'll be done, then we have nothing to
19 write to the Court about.

20 MS. SAMA: Yeah, we should discuss the matter
21 what should be done.

22 THE COURT: Okay, so it sounds like you all are
23 going to meet and confer, decide on the de-duping issue,
24 decide on a potential schedule for depositions, and if you
25 think two months is doable, because I don't want to have

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to come back and reset the deadlines. But if you think two months is all you need for the completion of the document production, then I can go ahead and issue an order setting that deadline.

MS. SAMA: Yes, for Athena, yes, Your Honor, but to be clear, we think that we can complete our review in two months. We are not certain of the other parties can complete their review in that amount of time. We think probably not maybe.

MR. GROSSMAN: You know what, Your Honor, the one month was fine with us. We don't need the two months. But one month is fine, and it sounds like it's fine for Athena as well.

MR. CLARICK: And for Delahunty, Your Honor, either one or two months is fine. We have no objection, and we're confident that we'll be able to complete anything that's actually due within that timeframe.

THE COURT: Okay, well, given --

MS. SAMA: Your Honor, we just --

THE COURT: Sorry, go ahead.

MS. SAMA: Apologies, Your Honor.

THE COURT: No, no, go ahead.

MS. SAMA: We just don't want to be prejudiced in resolving the issues that are of concern to us.

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THE COURT: No, I understand. If you can come back and show that the objections you're raising now were objections that were timely raised, and that requires the other side to produce more documents and then they need more time, I understand that that might require an adjustment. But I'd like to just set as firm a date as we can so that we can keep this moving. So since all the parties seem to say that one month is enough for now unless something else pops up, I'm going to go ahead and issue an order setting the deadline for the document production in one month, and then you will come back to me with a proposed schedule for completing all of the depositions.

MS. SAMA: Thank you, Your Honor.

MR. GROSSMAN: Your Honor, again, this is Judd Grossman. In the interest of moving things along, we'd ask that the deposition of Michael Weisz be scheduled now. That doesn't need to await the production of party discovery. It was a limited scope of information we sought from Mr. Weisz. We never got an objection, we never got a response other than an agreement to accept service on his behalf. So we'd like that to be ordered to move forward now while all of this other document discovery is being collected and produced by Athena.

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THE COURT: Yes, and I'm sorry, I didn't mean to suggest that depositions can't go forward during this time. If you think there's a deposition you can take that doesn't require whatever production is coming, you should, of course, schedule it. I just wanted to set an outside date by which all depositions had to be completed. So if you think you can move forward with Mr. Weisz's deposition, I don't see why it should have to wait until the completion of the production of the documents.

MR. GROSSMAN: Thank you very much.

THE COURT: If that's everything, then I think we're adjourned.

MR. GROSSMAN: Thank you, Your Honor.

THE COURT: Does anybody have anything else?

MS. SAMA: Thank you, Your Honor.

MR. CLARICK: No, Your Honor, thank you.

MR. GROSSMAN: Thank you so much.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, Athena Art Finance Corp. versus That Certain Artwork by Jean-Michel Basquiat Entitled Humidity, Docket #22cv4669, was prepared using PC-based transcription software and is a true and accurate record of the proceedings.

Signature _____

Carole Ludwig

Carole Ludwig

Date: June 20, 2022